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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SOLOMON D. RICKS, JR.,

Respondent,

v.

LAQUITA SUGGS,

Appellant.

B287011

(Los Angeles County
Super. Ct. No. TD041176)

APPEAL from an order of the Superior Court of
Los Angeles County, A. Veronica Saucedo, Temporary Judge.
(Pursuant to Cal. Const., art. VI, § 21.) Reversed.

LaQuita Suggs, in pro. per., for Appellant.

No appearance for Respondent.

LaQuita Suggs appeals from the domestic violence restraining order that her husband, Solomon D. Ricks, Jr., received against her. Because the trial court erred in denying Suggs her request for a continuance to which she was entitled as a matter of course under Family Code section 245, we reverse and remand.

FACTS AND PROCEDURAL BACKGROUND

On August 28, 2017, husband filed an ex parte request for a domestic violence restraining order against his wife. He alleged that the day before, wife had threatened him at the parking lot of the church they both attend. He further alleged that wife carried a knife and sharp razors, stalked him at his workplace, and harassed him with text messages and on social media. The trial court issued a temporary restraining order against wife and set the matter for hearing on September 18, 2017.

On September 18, 2017, wife appeared for the hearing, but husband did not. The trial court took husband's request for a restraining order off calendar, denied his request, and dissolved the temporary restraining order. Although husband did not appear for the hearing, that very same day he applied for and received a new, second ex parte temporary restraining order against wife. The court set the matter for hearing on October 10, 2017.

On October 10, 2017, wife appeared for the hearing, and husband again did not. The trial court dismissed the case against wife and dissolved the temporary restraining order "with prejudice."¹ Although husband did not appear for the hearing,

¹ In January 2018, the court entered a minute order nunc pro tunc deleting the phrase "with prejudice" from the

that very same day he applied for and received a new, third ex parte temporary restraining order against wife. Husband's third request duplicated his first request filed in August in all material respects, including the attached allegations and exhibits. (The appellate record does not contain husband's second request filed in September, although comments by the trial court indicate it, too, duplicated the August request.) The court set the matter for hearing on November 1, 2017.

On November 1, 2017, husband appeared for the hearing. Wife was not present. At 9:10 a.m., the trial court called the case. The court noted that husband's request alleged the same incidents of domestic violence as his first two requests, both of which had been dismissed. The court stated, "[Y]ou raised the exact same issue . . . against the same party [wife] and that matter has already been determined." The court asked whether new acts of domestic violence had occurred since the prior dismissals. Husband replied that wife had texted him in violation of the temporary restraining order. (The trial court later found those text messages, which were wife's notice to husband of court proceedings, did not violate the temporary restraining order.)

October 2017 minute order dismissing the petition. The reporter's transcript from the hearing at which the trial court dismissed husband's request shows, however, that the court dissolved the temporary restraining order "with prejudice." Accordingly, the October minute order accurately recorded the trial court's ruling from the bench. Consequently, the nunc-pro-tunc procedure is not available to modify the trial court's October minute order or ruling. (*Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1265–1266 citing *Estate of Eckstrom* (1960) 54 Cal.2d 540, 544.)

At this point in the hearing—which is page 5 of the reporter’s transcript—wife entered the courtroom. After wife identified herself, the hearing resumed with husband describing wife’s stalking and harassment of him through social media and text messages, some of which husband wanted to show the court. The trial court told husband he must let wife review the mostly undated and unorganized text messages before he offered them into evidence. But before they took a brief break to permit wife to review husband’s evidence, the court and wife discussed wife’s *ex parte* application filed several days earlier to dismiss husband’s now-third request for a restraining order. Wife explained she sought to dismiss husband’s third request because the trial court had previously dismissed *with prejudice* husband’s second request which had alleged the same acts of domestic violence. The court denied wife’s *ex parte* application and explained that the court was going to hear husband’s pending third request. The court then ordered a break in the hearing to permit husband to organize his evidence and present it to wife for her review.

When the hearing resumed, the trial court asked wife if she had sent to husband the text messages that husband was offering into evidence. Wife said she was unsure. She told the court, “I’m not certain. I haven’t seen though [*sic*]. I would have to reconcile this for mine.” Telling the court she “didn’t come prepared” for the hearing because she had believed the court would dismiss husband’s request for a restraining order based on the earlier dismissals, she requested a continuance. She asked the court, “I would like to request a continuance. I have a witness who saw the alleged event [at the church] that never occurred on 8/27. I

didn't come prepared for that. [¶] I was under the belief that the court would dismiss the case.”

The trial court denied the continuance. In ruling on the request, the court referred to wife's late arrival to the hearing, although the record is unclear whether the court denied the continuance because of wife's late arrival, or merely referred to her late arrival in prefacing the court's description of the stage of the proceedings when she entered the courtroom. The court stated, “[B]ecause you were late, I asked if there were any additional—if there was any additional facts or additional information that I should know about and, so, [husband] testified about stalking and harassing messages, and that's where this comes in to play. So, no, I am not granting your request for a continuance.”

After hearing the testimony and receiving exhibits, the trial court found wife had not stalked husband, but had harassed him with text messages. Describing the text messages, the court said most were “attacking [husband] and talking about his quote unquote mistress or his lovers. The relationship is over. Let it be. . . . The relationship is over. There's no need for you to harass him. No need for you to contact him. [¶] So, I am going to order this restraining order for a period of six months [until May 6, 2018].”

This appeal followed. Although the restraining order has expired, an expired restraining order continues to have legal consequences. (See, e.g., *Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655, 665-666 [child custody]; Fam. Code, § 3044, subd. (a) [custody]; *id.*, § 4320, subd. (i) [spousal support]. Accordingly, the restraining order's expiration does not render this appeal moot.

STANDARD OF REVIEW

We review a trial court's ruling on a request for a continuance for abuse of discretion. (*Dailey v. Sears, Roebuck & Co.* (2013) 214 Cal.App.4th 974, 1004.)

DISCUSSION

Under Family Code section 245, subdivision (a), the party responding to a request for a domestic violence restraining order is entitled to one continuance with no need to show good cause. Subdivision (a) states: "The respondent shall be entitled, as a matter of course, to one continuance for a reasonable period, to respond to the petition." (Fam. Code, § 245, subd. (a).) On the other hand, for the respondent to receive any additional continuances beyond the first continuance (or for the petitioner to receive a continuance), the party seeking a continuance must show good cause. (*Id.*, subd. (b).) Given the mandate in section 245, subdivision (a), the trial court erred in denying wife's request for a continuance to which she, as the responding party, was entitled as a matter of course without showing good cause. (Compare *id.*, subd. (b) ["good cause" required for continuance].)

The fact that wife requested a continuance after the hearing got underway does not change the result. A hearing on a request for domestic violence restraining order is an expedited proceeding statutorily required to be heard 21 to 25 days after a court issues an ex parte temporary restraining order. (Fam. Code, § 242.) In addition to being an expedited proceeding, the hearing may proceed with as little as five days' notice to the respondent. Moreover, the petition for a restraining order need not describe all the allegations in support of the request nor identify the evidence to be presented until offered at the hearing.

(See, e.g., *In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220, 222, 227–228.)

Given a petitioner’s limited duty to disclose allegations and evidence before the hearing (*In re Marriage of Davila & Mejia*, *supra*, 29 Cal.App.5th at pp. 222, 227–228), and given the statutorily-permitted short notice to a respondent, it stands to reason that a respondent may not know of the need to request a continuance until a hearing is underway. Here, wife requested a continuance because she had not had time to prepare her defense to husband’s evidence shown to her for the first time at the hearing. (See Fam. Code, § 245, subd. (b) [may orally request continuance at the hearing].) Moreover, she told the trial court that she had not anticipated the hearing to proceed, and thus did not bring a witness, because the court had previously dismissed with prejudice husband’s prior request containing substantially the same allegations. The denial of the continuance prejudiced wife’s ability to respond to husband’s allegations—a continuance to which she would have been entitled as a matter of course if requested a few minutes earlier. (Accord *Ross v. Figueroa* (2006) 139 Cal.App.4th 856, 860–864 [then-Family Code section 243 and procedural considerations regarding self-represented parties obligated trial court to grant continuance to responding party requested at “outset” of first hearing where ex parte TRO issued without notice].)

DISPOSITION

The judgment granting a domestic violence restraining order is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

LEIS, J.*

We concur:

CHANEY, Acting P. J.

BENDIX, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.